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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

COLLECTIVE DIGITAL STUDIO,
LLC, a California limited liability
company,

Plaintiff,

vs.

FREEPLAY MUSIC, LLC, a Delaware
limited liability company, and DOES 1
through 50, inclusive,

Defendants.

CASE NO.
2:15-CV-00936-JFW (MANx)

**PROTECTIVE ORDER
ENTERED PURSUANT TO
STIPULATION OF THE
PARTIES**

FREEPLAY MUSIC, LLC,

Counterclaimant,

vs.

COLLECTIVE DIGITAL STUDIO,
LLC,

Counterdefendant.

1 1. INTRODUCTION

2 1.1 PURPOSES AND LIMITATIONS

3 Discovery in this action may involve production of confidential,
4 proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may
6 be warranted. This Order does not confer blanket protections on all disclosures or
7 responses to discovery and the protection it affords from public disclosure and use
8 extends only to the limited information or items that are entitled to confidential
9 treatment under the applicable legal principles. As set forth in Section 12.3,
10 below, this Protective Order does not entitle the parties to file confidential
11 information under seal; Civil Local Rule 79-5 sets forth the procedures that must
12 be followed when a party seeks permission from the court to file material under
13 seal.

14 1.2 GOOD CAUSE STATEMENT

15 The parties assert that this action is likely to involve trade secrets, customer
16 and pricing lists and other valuable research, development, commercial, financial,
17 technical and/or proprietary information for which special protection from public
18 disclosure and from use for any purpose other than prosecution of this action is
19 warranted. Such confidential and proprietary materials and information
20 purportedly consist of, among other things, confidential business or financial
21 information, information regarding confidential business practices, or other
22 confidential research, development, or commercial information (including
23 information implicating privacy rights of third parties), information otherwise
24 generally unavailable to the public, or which may be privileged or otherwise
25 protected from disclosure under state or federal statutes, court rules, case
26 decisions, or common law. To expedite the flow of information, to facilitate the
27 prompt resolution of disputes over confidentiality of discovery materials, to
28 adequately protect information the parties are entitled to keep confidential, to

1 ensure that the parties are permitted reasonable necessary uses of such material in
2 preparation for and in the conduct of trial, to address their handling at the end of
3 the litigation, and to serve the ends of justice, a protective order is being entered
4 by the Court pursuant to the parties' stipulation. Information shall not be
5 designated as confidential for tactical reasons and nothing shall be so designated
6 without a good faith belief that it has been maintained in a confidential, non-
7 public manner, and there is good cause why it should not be part of the public
8 record of this case.

9 **2. DEFINITIONS**

10 2.1 Action: This pending federal lawsuit, Central District of California 2:15-
11 CV-00936-JFW (MANx)

12 2.2 Challenging Party: a Party or Non-Party that challenges the designation
13 of information or items under this Order.

14 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
15 how it is generated, stored or maintained) or tangible things that qualify for
16 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
17 the Good Cause Statement.

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
19 support staff).

20 2.5 Designating Party: a Party or Non-Party that designates information or
21 items that it produces in disclosures or in responses to discovery as
22 "CONFIDENTIAL."

23 2.6 Disclosure or Discovery Material: all items or information, regardless of
24 the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced
26 or generated in disclosures or responses to discovery in this matter.
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1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve
3 as an expert witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 2.9 Non-Party: any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this action.

9 2.10 Outside Counsel of Record: attorneys who are not employees of a
10 party to this Action but are retained to represent or advise a party to this Action
11 and have appeared in this Action on behalf of that party or are affiliated with a law
12 firm which has appeared on behalf of that party, and includes support staff.

13 2.11 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and
15 their support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation
19 support services (e.g., photocopying, videotaping, translating, preparing exhibits
20 or demonstrations, and organizing, storing, or retrieving data in any form or
21 medium) and their employees and subcontractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is
23 designated as "CONFIDENTIAL."

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or
2 compilations of Protected Material; and (3) any testimony, conversations, or
3 presentations by Parties or their Counsel that might reveal Protected Material.

4 Any use of Protected Material at trial shall be governed by the orders of the
5 trial judge. This Order does not govern the use of Protected Material at trial.

6 **4. DURATION**

7 Once a case proceeds to trial, all of the information that was designated as
8 confidential or maintained pursuant to this protective order becomes public and
9 will be presumptively available to all members of the public, including the press,
10 unless compelling reasons supported by specific factual findings to proceed
11 otherwise are made to the trial judge in advance of the trial. See Kamakana v. City
12 and County of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing
13 “good cause” showing for sealing documents produced in discovery from
14 “compelling reasons” standard when merits-related documents are part of court
15 record). Accordingly, the terms of this protective order do not extend beyond the
16 commencement of the trial or filing of case dispositive motions.

17 **5. DESIGNATING PROTECTED MATERIAL**

18 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

19 Each Party or Non-Party that designates information or items for protection
20 under this Order must take care to limit any such designation to specific material
21 that qualifies under the appropriate standards. The Designating Party must
22 designate for protection only those parts of material, documents, items, or oral or
23 written communications that qualify so that other portions of the material,
24 documents, items, or communications for which protection is not warranted are
25 not swept unjustifiably within the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited.
27 Designations that are shown to be clearly unjustified or that have been made for
28 an improper purpose (e.g., to unnecessarily encumber the case development

1 process or to impose unnecessary expenses and burdens on other parties) may
2 expose the Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that
4 it designated for protection do not qualify for protection, that Designating Party
5 must promptly notify all other Parties that it is withdrawing the inapplicable
6 designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in
8 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
9 stipulated or ordered, Disclosure or Discovery Material that qualifies for
10 protection under this Order must be clearly so designated before the material is
11 disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic
14 documents, but excluding transcripts of depositions or other pretrial or trial
15 proceedings), that the Producing Party affix at a minimum, the legend
16 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
17 contains protected material. If only a portion or portions of the material on a page
18 qualifies for protection, the Producing Party also must clearly identify the
19 protected portion(s) (e.g., by making appropriate markings in the margins).

20 A Party or Non-Party that makes original documents available for
21 inspection need not designate them for protection until after the inspecting Party
22 has indicated which documents it would like copied and produced. During the
23 inspection and before the designation, all of the material made available for
24 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
25 identified the documents it wants copied and produced, the Producing Party must
26 determine which documents, or portions thereof, qualify for protection under this
27 Order. Then, before producing the specified documents, the Producing Party must
28 affix the "CONFIDENTIAL legend" to each page that contains Protected

1 Material. If only a portion or portions of the material on a page qualifies for
2 protection, the Producing Party also must clearly identify the protected portion(s)
3 (e.g., by making appropriate markings in the margins).

4 (b) for testimony given in depositions that the Designating Party identify
5 the Disclosure or Discovery Material on the record, before the close of the
6 deposition all protected testimony.

7 (c) for information produced in some form other than documentary and for
8 any other tangible items, that the Producing Party affix in a prominent place on
9 the exterior of the container or containers in which the information is stored the
10 legend "CONFIDENTIAL." If only a portion or portions of the information
11 warrants protection, the Producing Party, to the extent practicable, shall identify
12 the protected portion(s).

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
14 failure to designate qualified information or items does not, standing alone, waive
15 the Designating Party's right to secure protection under this Order for such
16 material. Upon timely correction of a designation, the Receiving Party must make
17 reasonable efforts to assure that the material is treated in accordance with the
18 provisions of this Order.

19 20 21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time that is consistent with the Court's
24 Scheduling Order.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
26 resolution process (and, if necessary, file a discovery motion) under Local Rule
27 37.1 et seq.
28

1 6.3 The burden of persuasion in any such challenge proceeding shall be on
2 the Designating Party. Frivolous challenges, and those made for an improper
3 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
4 parties) may expose the Challenging Party to sanctions. Unless the Designating
5 Party has waived or withdrawn the confidentiality designation, all parties shall
6 continue to afford the material in question the level of protection to which it is
7 entitled under the Producing Party's designation until the Court rules on the
8 challenge.

9
10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is
12 disclosed or produced by another Party or by a Non-Party in connection with this
13 Action only for prosecuting, defending, or attempting to settle this Action. Such
14 Protected Material may be disclosed only to the categories of persons and under
15 the conditions described in this Order. When the Action has been terminated, a
16 Receiving Party must comply with the provisions of section 13 below (FINAL
17 DISPOSITION). Protected Material must be stored and maintained by a
18 Receiving Party at a location and in a secure manner that ensures that access is
19 limited to the persons authorized under this Order.

20 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
21 otherwise ordered by the court or permitted in writing by the Designating Party, a
22 Receiving Party may disclose any information or item designated
23 "CONFIDENTIAL" only to:

24 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
25 as employees of said Outside Counsel of Record to whom it is reasonably
26 necessary to disclose the information for this Action;

27 (b) the officers, directors, and employees (including House Counsel) of the
28 Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order
 2 to issue in the other litigation that some or all of the material covered by the
 3 subpoena or order is subject to this Protective Order. Such notification shall
 4 include a copy of this Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be
 6 pursued by the Designating Party whose Protected Material may be affected. If the
 7 Designating Party timely seeks a protective order, the Party served with the
 8 subpoena or court order shall not produce any information designated in this
 9 action as “CONFIDENTIAL” before a determination by the court from which the
 10 subpoena or order issued, unless the Party has obtained the Designating Party’s
 11 permission. The Designating Party shall bear the burden and expense of seeking
 12 protection in that court of its confidential material and nothing in these provisions
 13 should be construed as authorizing or encouraging a Receiving Party in this
 14 Action to disobey a lawful directive from another court.

15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
 16 PRODUCED IN THIS LITIGATION

17 (a) The terms of this Order are applicable to information produced by a
 18 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
 19 produced by Non-Parties in connection with this litigation is protected by the
 20 remedies and relief provided by this Order. Nothing in these provisions should be
 21 construed as prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to
 23 produce a Non-Party’s confidential information in its possession, and the Party is
 24 subject to an agreement with the Non-Party not to produce the Non-Party’s
 25 confidential information, then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non-
 27 Party that some or all of the information requested is subject to a confidentiality
 28 agreement with a Non-Party;

1 (2) promptly provide the Non-Party with a copy of the Protective
 2 Order in this Action, the relevant discovery request(s), and a reasonably specific
 3 description of the information requested; and

4 (3) make the information requested available for inspection by the
 5 Non-Party, if requested.

6 (c) If the Non-Party fails to seek a protective order from this court within
 7 14 days of receiving the notice and accompanying information, the Receiving
 8 Party may produce the Non-Party's confidential information responsive to the
 9 discovery request. If the Non-Party timely seeks a protective order, the Receiving
 10 Party shall not produce any information in its possession or control that is subject
 11 to the confidentiality agreement with the Non-Party before a determination by the
 12 court. Absent a court order to the contrary, the Non-Party shall bear the burden
 13 and expense of seeking protection in this court of its Protected Material.

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a Receiving Party learns that, by inadvertence or otherwise, it has
 16 disclosed Protected Material to any person or in any circumstance not authorized
 17 under this Protective Order, the Receiving Party must immediately (a) notify in
 18 writing the Designating Party of the unauthorized disclosures, (b) use its best
 19 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
 20 person or persons to whom unauthorized disclosures were made of all the terms of
 21 this Order, and (d) request such person or persons to execute the
 22 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
 23 A.

24 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 25 PROTECTED MATERIAL

26 When a Producing Party gives notice to Receiving Parties that certain
 27 inadvertently produced material is subject to a claim of privilege or other
 28 protection, the obligations of the Receiving Parties are those set forth in Federal

1 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
2 whatever procedure may be established in an e-discovery order that provides for
3 production without prior privilege review. Pursuant to Federal Rule of Evidence
4 502(d) and (e), insofar as the parties reach an agreement on the effect of
5 disclosure of a communication or information covered by the attorney-client
6 privilege or work product protection, the parties may incorporate their agreement
7 in the stipulated protective order submitted to the court.

8 **12. MISCELLANEOUS**

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in
14 this Protective Order. Similarly, no Party waives any right to object on any ground
15 to use in evidence of any of the material covered by this Protective Order.

16 12.3 Filing Protected Material. A Party that seeks to file under seal any
17 Protected Material must comply with Civil Local Rule 79-5. Protected Material
18 may only be filed under seal pursuant to a court order authorizing the sealing of
19 the specific Protected Material at issue. If a Party's request to file Protected
20 Material under seal is denied by the court, then the Receiving Party may file the
21 information in the public record unless otherwise instructed by the court.

22 **13. FINAL DISPOSITION**

23 After the final disposition of this Action, as defined in paragraph 4, within
24 60 days of a written request by the Designating Party, each Receiving Party must
25 return all Protected Material to the Producing Party or destroy such material. As
26 used in this subdivision, "all Protected Material" includes all copies, abstracts,
27 compilations, summaries, and any other format reproducing or capturing any of
28 the Protected Material. Whether the Protected Material is returned or destroyed,

1 the Receiving Party must submit a written certification to the Producing Party
2 (and, if not the same person or entity, to the Designating Party) by the 60 day
3 deadline that (1) identifies (by category, where appropriate) all the Protected
4 Material that was returned or destroyed and (2) affirms that the Receiving Party
5 has not retained any copies, abstracts, compilations, summaries or any other
6 format reproducing or capturing any of the Protected Material. Notwithstanding
7 this provision, Counsel are entitled to retain an archival copy of all pleadings,
8 motion papers, trial, deposition, and hearing transcripts, legal memoranda,
9 correspondence, deposition and trial exhibits, expert reports, attorney work
10 product, and consultant and expert work product, even if such materials contain
11 Protected Material. Any such archival copies that contain or constitute Protected
12 Material remain subject to this Protective Order as set forth in Section 4
(DURATION).

13 14. Any violation of this Order may be punished by any and all appropriate
14 measures including, without limitation, contempt proceedings and/or monetary
15 sanctions.

16
17 IT IS SO ORDERED.

18
19 DATED: August 4, 2015

20 
21 MARGARET A. NAGLE
22 UNITED STATES MAGISTRATE JUDGE
23
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Protective Order that was issued
 by the United States District Court for the Central District of California on [date]
 in the case of Collective Digital Studio, LLC v. Freeplay Music, LLC, et al., C.D.
 Cal. CASE NO. 2:15-CV-00936-JFW (MANx).

I agree to comply with and to be bound by all the terms of this Protective
 Order and I understand and acknowledge that failure to so comply could expose
 me to sanctions and punishment in the nature of contempt. I solemnly promise that
 I will not disclose in any manner any information or item that is subject to this
 Protective Order to any person or entity except in strict compliance with the
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
 Court for the Central District of California for the purpose of enforcing the terms
 of this Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print
 or type full name] of _____ [print or
 type full address and telephone number] as my California agent for service of
 process in connection with this action or any proceedings related to enforcement of
 this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____